

REMARKS/ARGUMENTS

Claims 1-97 have been examined. All claims were rejected. Claims 1-97 have been cancelled without prejudice to full or partial submission in one or more continuation applications. New claims 141-189 have been added as noted above. These claims are fully supported by the specification, drawings and claims as originally filed; no new matter has been added. Re-examination and reconsideration of the new claims are respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 102

Claims 1, 2, 46-48 and 94-96 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Shennib '348 (See 2/02/04 Office Action, at page 2). Also, claims 1-6, 8-10, 15, 23, 29, 30-37, 39, 40, 42-44, 49-54, 56-58, 63 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Fletcher '283 (See 2/02/04 Office Action, at page 4).

Applicants respectfully traverse these rejections. Neither Shennib '348 or nor Fletcher teach or suggest all the limitation of any of claims 1-97. This is evidenced by the fact that claims 1-97 were determined by the Examiner to be allowable in the Office Action of 7/23/03 with both references being before the Examiner. However, while not acquiescing to the above rejections, claims 1-97 have been cancelled. Thus, the above rejections are now moot. New Claims 141-189 have been added to more particularly point out embodiments of the invention. These new claims are proper, i.e. no new matter has been added, as the new claims are fully supported by the specification, drawings and claims as originally filed. Support for new independent claims 141, 188 and 189 can be found throughout the specification including, for example, page 18, lines 1-21; page 19, lines 8-13; page 21, lines 1-7; page 23, lines 10-16; page 27, lines 10-16; claims 1 and 50; and Figures 4-7, 11 and 15.

New Claims 141-189 are believed allowable over the prior art, as each includes at least one limitation neither anticipated nor obvious in light of the cited references. For example, new independent claims 141, 188 and 189 are novel and non-obvious over the cited references because neither Shennib '348 nor Fletcher '283 teach or suggest a microphone assembly sized to be substantially non-occluding of the cartilaginous portion of the ear canal as is recited in these

claims. In fact, both Shennib '348 and Fletcher '283 teach away from such a limitation in that both references only teach a microphone assembly that completely occludes the cartilaginous portion of the ear canal (See, e.g., element 12 in Figures 3-5,23 and 30-31 of Shennib '348, and element 41 in Figure 3 of Fletcher '283). For similar reasons, neither reference teaches or suggests a connector configured to flexibly support the microphone assembly in the cartilaginous portion of the ear canal and allow freedom of movement of the microphone assembly across a cross section of the ear canal in response to an applied force as is recited in claims 141 and 189. On the contrary, both references teach away from this limitation, in that both teach a hearing device having a connector that pivots or articulates about its microphone assembly (See e.g., the abstracts of both references and Figures 9a and 9b of Shennib '348, and Figures 3 and 5 of Fletcher '283). Neither device will so articulate if its microphone assembly has freedom of movement across a cross section of the ear canal (i.e., both require the microphone assembly to be held in place in the ear canal for its connector to pivot).

Accordingly, for the reasons above, independent claims 141, 188 and 189 are believed to be in condition for allowance. Also, as claims 142-187 depend from now allowable claim 141, it is believed that these claims are also in condition for allowance.

REJECTIONS UNDER 35 U.S.C. § 103

Claims 7, 13, 14, 18-22, 27-28, 55, 61, 66-70 and 75 and 76 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Fletcher '283 (See 2/02/04 Office Action, at page 7). Also, claims 24-26 and 72-74 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Fletcher '283 in view of Sciarra '440(See 2/02/04 Office Action, at page 8). Finally, claims 11, 12, 16, 17, 38, 41, 45, 59,60,64, 65, 86, 89, and 93 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Fletcher '283 in view of Garcia '692 (See 2/02/04 Office Action, at page 9).

Applicants respectfully traverse these rejections for the reasons stated above. However, while not acquiescing to the above rejections, all of the rejections are now considered moot in light of the cancellation of claims 1-97 and the newly presented claims. As discussed above, Fletcher '283 not only fails to teach or suggest all elements of the newly presented claims

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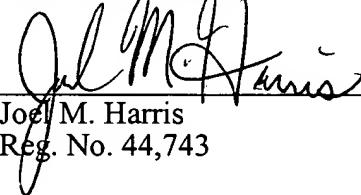
141-189, but actually teaches away from these claims. Therefore, the skilled artisan would not be motivated to combine any of the cited references with Fletcher '283 as there would no expectation of success. Further, none of the cited references compensate for the deficiencies of Fletcher '348. Accordingly claims 141-189 are considered non obvious over all of the cited references, because none of the potential combinations teach or suggest all elements of any of claims 141-189.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,


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